

REMARKS

Reconsideration and allowance of the subject patent application are respectfully requested.

Claims 7-11 were rejected under 35 U.S.C. Section 112, second paragraph, as allegedly being indefinite. Claim 7 has been rewritten to address the issue raised in the office action and withdrawal of the Section 112, second paragraph, rejection of claim 7 and its dependent claims 8-11 is respectfully requested.

Claims 1, 3-7 and 9-13 were rejected under 35 U.S.C. Section 103(a) as allegedly being made "obvious" by Roberts et al. (US-2004/0088570) in view of Miyata et al. (U.S. - 2004/0117401). Reconsideration of this rejection is respectfully requested.

Contrary to the rejection under 35 U.S.C. 102(b) raised in the second office action on the basis of lack of novelty over Roberts et al., the rejection in the present third office action acknowledges that Roberts et al. does not explicitly teach the limitation of claim 1 that the factors in dependence on which it is determined whether the file can be regarded as safe include "the length of time for which the database indicates that the file has been known without malware-containing instances of it being detected." However, the office action now cites a new document (Miyata et al.) and argues that Miyata et al. does teach this limitation and that it would have been obvious to the person skilled in the art at the time of the invention to modify Roberts et al. to include this limitation from Miyata et al. Applicants respectfully submits that this argument is improper because, among other things, the assertion that Miyata et al. teaches this limitation is incorrect for at least the following reasons.

Miyata et al. relates to a system storing files on a file server 13. The file server 13 can issue a scan request to scan server 15 to scan files. This occurs for example when the file is opened or closed on request from a client 11. The system avoids the need for unnecessary scans by not scanning files when the virus database has not been updated since the last time the file has been scanned. This is achieved by comparing the last scan time 204 of the file stored as an attribute of the file (referred to as X in Fig. 3) with the file update time of the virus database 1621 (referred to as Y in Fig. 3) in step 307 of Fig. 3.

Thus Miyata et al. does not disclose the limitation of the claims of using a factor of "the length of time for which the database indicates that the file has been known without malware-

containing instances of it being detected.” None of (a) the last scan time 204 (or X); (b) the last update time Y; or (c) the comparison of X with Y in step 307 constitutes such a feature.

Considering (a) the last scan time 204 (or X), this is an attribute of the file specifying the point in time when the file was last scanned. This is not a “length of time” as required by claims 1 and 7 because it specifies a point in time and there is no consideration of a length of time. For example, the last scan time 204 (or X) is not subtracted from the current time to obtain a length of time. Furthermore, the last scan time 204 (or X) is clearly not “the length of time for which the database indicates that the file has been known without malware-containing instances of it being detected” because it simply indicates when the file was last scanned and without giving any indication of how long the file has been known without malware-containing instances of it being detected. Even considering for the sake of argument the notional case that Miyata et al. did teach comparing the last scan time 204 (or X) with the current time (which it does not), this would result in consideration of the length of time since the file was last scanned, which is not the length of time recited in the claims.

Considering (b) the last update time Y, this simply specifies the point in time when the virus database was last updated. This does not constitute the “the length of time for which the database indicates that the file has been known without malware-containing instances of it being detected” because it concerns the virus database.

Considering (c) the comparison of X with Y in step 307, this feature of Miyata et al. simply involves determining whether the last scan time 204 (or X) is before or after the last update time Y. There is no consideration of a “length of time” as required by the claims 1 and 7 because Miyata et al. is simply determining whether one point in time occurs before or after another. Indeed the lengths of time are irrelevant to this comparison in Miyata et al. The result of the comparison can be positive (if $X < Y$) or negative (if $X > Y$) regardless of the length of time between the last scan time 204 (or X) and the current time being large or small. Similarly, the result of the comparison can be positive (if $X < Y$) or negative (if $X > Y$) regardless of the length of time between X and Y being large or small. Thus, Miyata et al. does not teach any consideration whatsoever of the limitation of “the length of time for which the database indicates that the file has been known without malware-containing instances of it being detected.”

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To the contrary, the teaching of Miyata et al. is simply that if the virus database has not been updated (as indicated by the last update time Y) since the file was last scanned (as indicated by the last scan time 204 or X), then it is not necessary to perform a subsequent scan of the file.

Thus Miyata et al. does not consider the claimed feature that "the length of time for which the database indicates that the files have been known without malware-containing instances of it being detected" can be used as the basis for determining that the file is regarded to be safe and hence subject, for example, to less thorough processing.

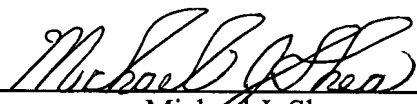
Applicant submits that the rejection is improper because Miyata et al. does not teach the limitation asserted in the office action. Thus, it is not necessary to address the additional argument in the office action that it would have been obvious to modify Roberts et al. to include such a limitation from Miyata et al. However, the absence of argument on this point should not be taken as acceptance that it is obvious to modify any teaching of Roberts et al. by any teachings of Miyata et al.

The rejection of dependent claims 3-6 and 9-12 is respectfully traversed at least because of the dependencies of these claims on one or the other of claims 1 and 7.

The pending claims are believed to be allowable and favorable office action is respectfully requested.

Respectfully submitted,

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